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Indiana *ENERGY*

Association

1600 ONE AMERICAN SQUARE, BOX 82065 INDIANAPOLIS, INDIANA 46282 317-632-4406 FAX 317-262-4940 www.indianaenergy.org

Ed Simcox, President

Stan Pinegar, Vice President

Boonville Natural Gas Corp.

Citizens Energy Group

Community Natural Gas Co. Inc.

Duke Energy

Indiana Michigan Power

Indiana Natural Gas Corp.

Indianapolis Power & Light Company

Kokomo Gas & Fuel Co.

Lawrenceburg Gas Co.

Midwest Natural Gas Corp.

Northern Indiana Fuel & Light Co.

Northern Indiana Public Service Co.

Ohio Valley Gas Corp.

Vectren Energy Delivery of Indiana, Inc.

THE VOICE FOR INDIANA ENERGY

November 20, 2008



#08-817 (APCB) CAIR Replacement Rule

Ms. Susan Bem

Mail Code 61-50

c/o Administrative Assistant

Rules Development Section

Office of Air Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, IN 46204

Re: Development of New Rules Concerning Nitrogen Oxide & Sulfur Dioxide Emissions from Fossil Fuel-Fired Power Plants

Dear Susan,

Enclosed, please find comments submitted in response to the First Notice referenced above addressing SO₂ and NO_x emissions from Indiana power plants. These comments are filed by the Indiana Energy Association ("IEA") on behalf of our investor-owned Indiana utility members as well individual non IEA members, including Dominion State Line Energy, Indiana-Kentucky Electric Corporation, Wabash Valley Power, and Hoosier Energy REC, Inc. The IEA member companies and the individual non-member companies listed above are collectively referred to as the Indiana Utility Group ("IUG") in the attached comments.

The IUG appreciates the opportunity to submit these comments. If you have any questions or concerns regarding our comments, please do not hesitate to contact me.

Very truly yours,


Stan Pinegar

RECEIVED
NOV 21 2008
State of Indiana
Department of Environmental Management
Office of Air Quality

**Comments submitted on behalf of
Indiana Utility Group
To
DEVELOPMENT OF NEW RULES CONCERNING NITROGEN OXIDE AND
SULFUR DIOXIDE EMISSIONS FROM FOSSIL FUEL-FIRED POWER
PLANTS, First Notice of Comment Period (#08-817)**

These comments are offered on behalf of the Indiana Energy Association (IEA) and individual non-member companies to include: Dominion State Line Energy, Indiana-Kentucky Electric Corporation, Wabash Valley Power, and Hoosier Energy REC, Inc. The comments were developed in response to the October 22, 2008, posting in the Indiana Register of a First Notice of Comment Period filed by the Indiana Department of Environmental Management (IDEM). This First Notice concerns the "Development of New Rules Concerning Nitrogen Oxide and Sulfur Dioxide Emissions from Fossil Fuel-Fired Power Plants." The close of the comment period is November 21, 2008.

The IEA is an association of the 13 Indiana investor-owned electric and gas utilities and one charitable public trust gas utility which represent over 97 percent of the baseload electricity generating capacity in the state which is impacted by these rules. The IEA and the aforementioned individual non-member companies, collectively referred to as the "Indiana Utility Group," operate 21,374 MW of baseload coal-fired capacity in Indiana and serve over 4,000,000 Indiana customers. The Indiana Utility Group is committed to working with IDEM to develop an appropriate regulatory program that provides air quality benefits in the most cost-effective manner possible.

These comments are offered by the Indiana Utility Group as a continuation of that commitment, but are not intended to be exhaustive nor are they presented in any order of importance. Any omission of any particular issue should not be interpreted as intentional

or conclusive of our thoughts and ideas on the matter. The Indiana Utility Group appreciates the opportunity to provide comments in response to IDEM's First Notice of Comment Period, #08-817.

The First Notice was developed before and published contemporaneously with the D.C. Circuit Court's ("Court") October 21, 2008 Order requesting Petitioners in the Federal CAIR challenge to advise the Court on preferred remedies given the Court's initial July 11, 2008 CAIR decision. The Indiana Utility Group notes, as IDEM correctly states in its First Notice, "[a]s court proceedings progress, the vacatur is not in effect and CAIR is still in place." On November 5, 2008, pursuant to the October Order, various Petitioners in the CAIR litigation, including the state of Indiana and 24 of the 28 CAIR states, filed responses to the Order stating that they prefer a stay of the mandate or remand as a remedy rather than vacatur while EPA is given the opportunity to correct the legal deficiencies in the CAIR. This large number of requests raises the potential that the Court will stay or remand all or parts of the CAIR to EPA for revision and, if it does, the CAIR already in place in Indiana will remain in place until revised in accordance with the Court Order, which could take substantial time. The Indiana Utility Group therefore believes that IDEM is premature in moving forward with this First Notice and requests that IDEM efforts to move forward with both an Emergency Rule and the First Notice be put on hold until the intentions of the Court are known.

The foregoing notwithstanding, the Indiana Utility Group recognizes that the state will need to address in-state nonattainment areas and address remedies to any potential significant contribution to interstate transport of pollution if the mandate vacating CAIR is issued soon. We therefore look forward to working cooperatively with

IDEM regarding development of modeling and attainment strategies. We also look forward to sharing data with IDEM in order to accomplish the goal of reducing emissions in a cost-effective manner that allows the commercial and industrial customers of the Indiana Utility Group member companies to continue to remain competitive in their respective markets and provide affordable electricity for residential customers.

More importantly, the Indiana Utility Group believes that such strategies must allow the residential and corporate citizens of Indiana to receive the lowest cost service that is possible while meeting all applicable air quality standards. To that end, the Indiana Utility Group submits the following comments regarding the subject First Notice:

I. Indiana CAIR Replacement Rulemaking is Premature

The air quality in all parts of the state has shown continual improvement over the years. Recent monitoring trends for ozone and PM2.5 suggest that, by December 2008 or 2009, attainment of the ozone and PM2.5 NAAQS may be demonstrated. The 2005 Indiana version of the CAIR required that companies comprising the Indiana Utility Group invest billions of dollars for additional emission controls at generating stations subject to the rules, with concomitant increases in the cost of electricity provided to their customers. Companies have made those pollution control investments. Since the Indiana CAIR is still in effect at this time and it is just as likely that the ultimate remedy in the CAIR litigation will be a stay of the mandate or remand rather than vacatur, the Indiana Utility Group companies are obliged to meet the emission reductions required by the CAIR. The Indiana Utility Group believes that it is premature to engage in rulemaking prior to the ultimate disposition

of the CAIR. Accordingly, the Indiana Utility Group favors adoption by IDEM of Alternative 2, “[d]o not proceed with the rulemaking,” as described in the IDEM First Notice.

The Indiana Utility Group therefore believes that IDEM is premature in moving forward with this First Notice since the current program will result in environmental benefits being preserved and we request that IDEM efforts to move forward with both an Emergency Rule and this First Notice be put on hold until the intentions of the Court are known. To do otherwise will cause substantial state and stakeholder resources to be expended that may otherwise be unnecessary for a significant period of time, and perhaps not at all. The Court is well aware of the January 1, 2009 CAIR implementation date and is likely to render its decision on the disposition of the CAIR shortly.

II. Alternatively, IDEM Should Focus on Modeling Control Strategies to Improve Air Quality

The foregoing notwithstanding, the Indiana Utility Group recognizes that, if the Court rejects Petitioners requests and issues the CAIR vacatur mandate, the state will need to specifically address in-state ozone and PM2.5 nonattainment areas and address remedies to any potential significant contribution to interstate transport of pollution. We therefore look forward to working cooperatively with IDEM and all affected stakeholders regarding development of a well reasoned plan based on sound air quality modeling and appropriately designed and attributed sector specific source control strategies. We also look forward to sharing data with IDEM in order to accomplish the

goal of reducing emissions in a cost-effective manner that allows the industrial and commercial customers of the Indiana Utility Group member companies to continue to remain competitive in their respective markets as well as adhering to the state's energy policy that makes the best use of plentiful and local coal reserves to grow Indiana jobs and incomes. More importantly, the Indiana Utility Group believes that such strategies must allow our residential customers to receive the lowest possible cost and most reliable electric service while Indiana meets all applicable air quality standards.

III. Rather than Replacing CAIR, IDEM Should be Involved in an Attainment Rulemaking Process that Includes Stakeholders

The ultimate goal of any current IDEM rulemaking should be attainment of the ozone and PM2.5 NAAQS. The CAIR, by EPA's own admission, was not designed as an attainment program to meet the specific needs of each nonattainment area. The Indiana Utility Group believes that IDEM should be using its valuable resources to develop an approvable SIP for local attainment of the ozone and PM2.5 NAAQS. Moreover, the Indiana Utility Group notes that IDEM has considerable experience over the years in creating stakeholder groups in efforts to design attainment plans for various nonattainment areas around the state and urges that such a stakeholder process be initiated in this instance. That process should be coordinated with other states so that the result is a regional emissions reduction program that incorporates lawful interstate trading as determined by the CAIR decision.

We understand that IDEM is presently engaged in negotiations with many other states regarding emissions reduction strategies, but notably without stakeholder

input. The Indiana Utility Group objects to these negotiations being conducted without stakeholder input and requests that stakeholders be engaged in the process immediately.

The Indiana Utility Group believes that the present First Notice inappropriately focuses on the specifics of CAIR budgets and associated features, many of which were challenged and subsequently vacated by the court. Alternative 1, as detailed in the *Basic Purpose and Background* section of the First Notice, appears to propose a CAIR replacement rule that would merely reinstate all the Phase I and Phase II CAIR requirements but potentially allow for some as yet undefined flexibility provisions. However, on July 11, 2008, the Court found so many 'fundamental flaws' in the CAIR that 'no amount of tinkering' with the rule or revising of the explanation will transform CAIR as written into an acceptable rule. The Indiana Utility Group won't delineate all of the Court's findings in these comments but the strict adherence in the First Notice to an "equivalent" CAIR program raises significant concerns that a new but essentially identical rule may not survive a legal challenge (see also *Clean Air Markets Group v. Pataki*, 338 F.3d 82 (2d Cir. 2003)). The Court in its CAIR decision also voiced its concern that state CAIR SO₂ and NO_x budgets, the same budgets contained in the IDEM First Notice, may no longer pass the highly cost effective test under EPA's two prong test for meeting section 110(a)(2)(D) obligations without a comparable multi-state trading program. Accordingly, the Indiana Utility Group will be pleased to work with IDEM to develop a program that is specifically focused on the needs of the state of Indiana, is based on sound science, is legally defensible, utilizes up-to-date modeling of all potential source categories that contribute to nonattainment,

results in the least-cost attainment plan for the state and, most importantly, is independent of previous CAIR elements held by the Court to be unlawful.

IV. The Trading and Credit Programs Proposed by IDEM in the First Notice Need Further Clarification in Light of the CAIR Decision

Throughout the CAIR rulemaking process, both at the federal and state levels, the Indiana Utility Group companies have supported the development and use of regional interstate trading as a least cost approach to achieve required SO₂ and NO_x emissions reductions. While the Court's July 11, 2008 complex discussion on the rule is not entirely clear, we believe it does not bar future interstate or intrastate trading in addressing downwind "significant contribution." However, the Court's findings do change the manner in which a trading program can be implemented.

IDEM proposes flexibility provisions in its First Notice that include:

- a. Source-wide and intrastate system emissions averaging for units operated under common ownership.
- b. Multiyear emissions averaging plan or compliance agreement/order (Phase I only). An emissions averaging plan involves demonstrating compliance by averaging emissions over a portion of Phase I only (two to three year span). A compliance agreement/order would be based on a plan prepared by the source that demonstrates how compliance will be achieved at a specified point in time. Both of these would be in the form of a legally enforceable agreement with IDEM.
- c. Intrastate and interstate emissions reduction credit tradeoff. Sources could enter into agreements with sources in Indiana or other states to use credits

that correlate to tons reduced from their emissions reductions. An Indiana certification statement would be required to ensure reductions attained elsewhere are:

- i. Realized in conjunction with a specified baseline within an eligible state.
- ii. Not used as credits to satisfy a separate legal or regulatory obligation.

If a program becomes necessary for emissions reductions to address nonattainment in Indiana and significant contributions to nonattainment in other states, the Indiana Utility Group very much favors inclusion of elements that allow the type of flexibility proposed by IDEM in its First Notice. However, the Indiana Utility Group notes that the Court, in its July 11 decision struck down both the SO₂ and NO_x trading programs as EPA implemented them in the CAIR. With respect to both the CAIR SO₂ and NO_x trading programs, the Court stated:

The [SO₂] trading program is unlawful, because it does not connect states' emissions reductions to any measure of their own significant contributions. To the contrary, it relates their SO₂ reductions simply to their Title IV allowances, tampering unlawfully with the Title IV trading program. The SO₂ regionwide caps are entirely arbitrary, since EPA based them on irrelevant factors like the existence of the Title IV program. The allocation of state budgets from the NO_x caps is similarly arbitrary because EPA distributed allowances simply in the interest of fairness.

The Indiana Utility Group submits that the lack of specific details regarding the flexibility provisions articulated by IDEM in its First Notice does not

provide adequate details to comment on whether the provisions are ultimately legally viable, approvable by EPA, or whether they are practical programs that will lower costs to affected sources going forward. The Indiana Utility Group looks forward to working with IDEM to explore these as well as other flexibility compliance mechanisms during the rulemaking process. For these and other reasons, when presented with only the choice between Alternative 1 and Alternative 2, the Indiana Utility Group urges IDEM to adopt Alternative 2 until the CAIR litigation is resolved. IDEM should then republish a revised First Notice based on the best information available at that time.

IV. Conclusion

For the foregoing reasons, the Indiana Utility Group recommends that IDEM select Alternative 2 and discontinue its efforts to promulgate a replacement for the CAIR in Indiana. If the Court issues a mandate vacating the CAIR, IDEM should establish a work group process to start the necessary planning to reinstitute the NOx Budget Trading Rule and outline an attainment plan based on the best available science, SIP quality emissions modeling, SIP quality air dispersion modeling, multi-sector emissions reduction strategies, emission trading flexibility options and complete fiscal and economic impact studies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stan Pinegar". The signature is fluid and cursive, with the first name "Stan" and last name "Pinegar" clearly distinguishable.

Stan Pinegar

On behalf of the Indiana Utility Group

Improving Kids' Environment

3951 Meridian St, Ste 160
Indianapolis, IN 46208-4062
www.ikecoalition.org
Fax: 866-234-8505
317-902-3610
mccabe@ikecoalition.org

November 21, 2008

Susan Bem
Mail Code 61-50
c/o Administrative Assistant
Indiana Department of Environmental Management
Office of Air Quality
100 North Senate Avenue
Indianapolis, Indiana 46204

Re: First Notice of Rulemaking Concerning CAIR Replacement Rule; LSA #08-817

Dear Ms. Bem:

Improving Kids' Environment, Inc. (IKE) appreciates the opportunity to comment on the First Notice of Public Comment Period regarding emissions of sulfur dioxide and nitrogen oxides from fossil fuel-fired power plants. IKE is a not for profit organization based in Central Indiana that seeks to reduce environmental threats to children's health. Emissions from fossil fuel-fired power plants are significant contributors to Indiana's air quality across the state, which in a number of areas does not meet federal and state air quality health standards for ozone and fine particles. According to the Indiana State Department of Health's most recent asthma burden report, approximately 10% of Indiana children have asthma, a chronic disease which is exacerbated by outdoor air pollution and is the leading cause of missed school days. Reducing emissions from power plants is a critical element of Indiana's plan for improved air quality and public health.

Reductions in power plant emissions have already demonstrated to be extremely effective in improving air quality. The Acid Rain program, the NOx SIP Call and recent additional reductions appear to have resulted in improved air quality, according to state monitoring data. The recent federal court decision overturning the federal Clean Air Interstate Rule is an unfortunate step backwards and particularly concerning because the regional nature of the CAIR program was well suited to addressing the regional impacts of power plant emissions and the multistate nature of utility companies.

IKE believes that USEPA needs to rapidly address the issues identified in the Court's opinion and reinstate the federal NOx and SO2 reduction program and will do whatever it can to advocate for that at the national level. In the meantime, IKE fully supports IDEM's effort to identify ways to achieve the CAIR reductions through an Indiana rule.

IKE Board of Directors Richard van Frank (*President*), Dr. Bill Beranek (*Vice President*), Dr. Jack Leonard (*Treasurer*), Dr. Indra Frank (*Secretary*), Sen. Beverly Gard, Dr. John Ellis, Dr. Steve Jay, Dr. Marc Lame, Kathy Watson.

Following are IKE's specific comments:

1. IKE supports IDEM's intention to convene a stakeholder workgroup to assist the agency as it proceeds through the rulemaking.
2. IDEM should move ahead with this rulemaking even though the Court has not issued a final vacatur. Waiting until that step happens will just put Indiana further behind in meeting Clean Air Act deadlines and achieving needed improvements in air quality. If for some reason the vacatur is not issued, the rulemaking need not be completed.
3. A critical step is to reinstate the NOx SIP call ozone season reduction program, which will sunset as part of the Indiana CAIR rulemaking.
4. IDEM should work closely with the LADCO states and other states in the CAIR region as this rulemaking, and any federal level rulemaking, proceeds. IKE agrees that maximizing flexibility for utility companies is important, but providing such flexibility is difficult with state-level only rules. IKE requests that IDEM provide information on how other states are considering responding to this situation at workgroup meetings, and how Indiana is coordinating its rulemaking with other states.
5. If IDEM's rule includes provisions that allow Indiana utilities to average or trade with utilities outside Indiana, what compliance and enforcement mechanisms exist to ensure the state budget is achieved and reductions outside of Indiana would benefit Indiana nonattainment areas? This issue warrants thorough discussion among the stakeholders as does the option of multiyear averaging.
6. The notice mentions that the replacement rule would be contingent on entry of the vacatur of CAIR. Would the rule itself state that (which might pose an approvability issue, since Indiana rules are not allowed to be contingent on future events) or would IDEM simply not ask the Air Pollution Control Board to finalize the rule until vacatur has been entered?
7. When will IDEM convene the first stakeholder workgroup meeting? IKE suggests that it be soon, as work is proceeding on draft rules and on the companion emergency rule.

Thank you for your consideration of these comments. IKE looks forward to working with the agency and other stakeholders as this important process moves ahead.

Very truly yours,



Janet G. McCabe
Executive Director

cc: IKE Board
IKE Advisory Board

PURDUE

UNIVERSITY

DEPARTMENT OF UTILITIES & CONSTRUCTION

Office of the Senior Director

November 21, 2008

Via Facsimile and First Class Mail

#08-817 (APCB) [CAIR Replacement Rule]

Ms. Susan Bem

c/o Administrative Assistant

Rules Development Section

IDEM - Office of Air Quality, MC 61-50

100 North Senate Avenue

Indianapolis, Indiana 46204-2251

**RE: First Notice of Comment Period
#08-817, CAIR Replacement Rule**

Dear Ms. Bem:

Purdue University ("Purdue") appreciates the opportunity to submit comments on the above-referenced First Notice of Comment Period related to the Agency's CAIR Replacement Rule. As the owner and operator of affected units under the NOx budget trading program and the Clean Air Interstate Rule (CAIR) ozone season NOx programs, Purdue is directly affected by this rulemaking.

As IDEM is well aware, the initial opinion of the Court to vacate the CAIR rule impacts non-EGU source owners and operators subject only to the ozone season NOx rules, despite the significant (and justified) focus on the impacts to electric utilities. 326 IAC 10-4 will sunset on December 31, 2008, absent any action to reverse the sunset. Unfortunately, without clear direction from either the Courts or the EPA on the fate of CAIR ozone season NOx rules, the non-EGU sources in Indiana are left without a clear understanding of the ozone season NOx allocations for the 2010 ozone season.

Purdue believes that the Agency must undertake rulemaking in short order to implement an ozone season NOx allocation for non-EGU sources under 326 IAC 10-4 for (at a minimum) the 2010 ozone season, but preferably for ozone seasons 2010 - 2012 (a 3-year allocation). This is necessary for owners and operators of affected non-EGU sources to plan for these future years.

As well, there have been many developments with respect to the EPA's CAIR and the initial opinion issued by the U.S. Circuit Court of Appeals for the District of Columbia since the First Notice was initially published in the Indiana Register on October 22, 2008. In light of these developments, Purdue requests that IDEM be cautious moving forward with rulemaking that impacts only sources located in Indiana so that Indiana is not "out of sync" with the regional cap-and-trade programs upon which CAIR is based, and to prevent negative economic impact on the state.

Physical Facilities

Purdue University IDEM ICAIRR First Notice
21 November 2008
Page 2 of 2

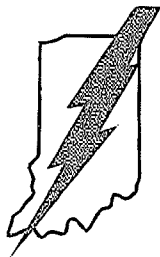
Should the Agency form additional stakeholder groups during the rulemaking process, Purdue requests to be added to distribution lists and notifications. Please contact me should you have questions regarding these comments. I can be contacted at (765) 496-6405 or via e-mail at rmridgway@purdue.edu to discuss these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin Ridgway", written over a horizontal line.

Robin Mills Ridgway, Ph.D., P.E.
Physical Facilities Environmental Regulatory Consultant

620.212

**IMPA**
INDIANA MUNICIPAL POWER AGENCY

November 21, 2008

#08-XX(APCB) CAIR Replacement Rule
Susan Bem Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

**Re: Indiana Municipal Power Agency Comments on Development of New Rules
Concerning Nitrogen Oxide and Sulfur Dioxide Emissions from Fossil-Fuel-
Fired Power Plants**

Dear Ms. Bem:

On behalf of Indiana Municipal Power Agency ("IMPA"), this letter provides the following comments on the above-referenced rulemaking.

Utilities in the state have been planning for over three years to comply with the Clean Air Interstate Rule ("CAIR") and have worked with the State of Indiana to craft Indiana's rules in 326 IAC 24, which generally followed the federal CAIR. The result of utilities' planning was capital investment and allowance management to facilitate near term and long term compliance with CAIR nitrogen oxide and sulfur dioxide reduction requirements. IMPA understands that Indiana must comply with federal National Ambient Air Quality Standards and supports action that Indiana may take that would be consistent with but not more stringent than CAIR along with utilizing previously expected EGU allowance allocation estimates provided by IDEM.

* * *

Thank you for the opportunity to submit these comments. If you have any questions, please call.

Sincerely,

INDIANA MUNICIPAL POWER AGENCY

Jack Alvey
Vice President Generation

Pamela F. Faggert
Vice President and Chief Environmental Officer

Dominion Resources Services, Inc.
5000 Dominion Boulevard, Glen Allen, VA 23060
Phone: 804-273-3467



Dominion®

#5

November 21, 2008

#08-817(APCB) CAIR Replacement Rule
Susan Bem Mail Code 61-50
C/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Re: Development of New Rules Concerning Nitrogen Oxide and Sulfur Dioxide
Emissions from Fossil Fuel-Fired Power Plants, First Notice of Comment Period
(LSA Document #08-817)

Dear Ms. Bem:

Dominion appreciates the opportunity to comment on the proposed regulations under article 24, section 326 of the Indiana Administrative Code that seek to impose SO₂ and NO_x emission reductions on electric generating units (EGU's) in Indiana to replace the state rules implementing EPA's Clean Air Interstate Rule (CAIR). Dominion is the owner and operator of the Dominion State Line Energy, LLC power generating facility located in Hammond, Indiana. The facility includes two coal-fired utility boilers that are subject to CAIR and would therefore be subject to this rulemaking.

Dominion fully supported the EPA CAIR rule and the Indiana state-level rules that were developed to implement the federal CAIR requirements. We understand the Indiana Department of Environmental Management's (IDEM) concern about the possible implications to state air quality plans as a result of the federal Court ruling overturning the EPA rule. However, while we support IDEM's efforts to develop reasonable regulatory requirements to further the air quality goals of Indiana, we have several concerns about IDEM proceeding unilaterally with a state-specific approach to address the potential vacatur of CAIR at this time for the following reasons.

1. The Indiana CAIR Replacement Rule is Premature

We believe it is premature to engage in a rulemaking replacing CAIR prior to the ultimate disposition of the EPA rule by the federal Court. As you are aware, U.S. EPA has requested a hearing before the full Court and the Court has not issued the mandate vacating CAIR. IDEM specifically notes in its notice of rulemaking that the vacatur is not in effect and CAIR remains in place. In addition, the Court issued an Order on October 21st requesting additional responses to its July 11, 2008 decision to

which several petitioners have indicated a preference for a stay of the mandate and a remand of the rule, rather than a vacatur, while EPA conducts a new rulemaking correcting the deficiencies identified by the Court. Indiana was among 22 states that filed a joint amicus brief in support of a remand and requesting a stay of the mandate. If the Court stays or remands all or parts of the CAIR to EPA for revision, the CAIR rules already promulgated in Indiana will remain in place. Furthermore, the State is actively engaged in discussions with a number of other CAIR states in the Midwest and Northeast regarding the development of a possible regional approach as an alternative to CAIR should the Court issue the mandate officially vacating the rule. Given these circumstances, there is no compelling reason for Indiana to embark on its own course at this time.

2. **Affected Facilities Need Clarity that the Flexible Compliance Options IDEM has Conceptually Outlined in the First Notice Can Be Implemented**

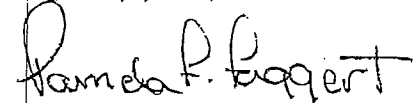
IDEM has listed a number of alternative options in the rulemaking proposal with the intent to provide sources compliance flexibility, including intrastate and interstate emission reduction "tradeoffs", intrastate system emissions averaging for units under common ownership, and multi-year emission averaging. Dominion State Line Energy, LLC is a "stand-alone" facility and would not have the ability to average among units under common ownership within the State of Indiana. Dominion's plans were to comply with the reduction requirements of CAIR through the continued use of low sulfur coal combined with the use of allowances from both the federal NOx and SO2 trading programs, as this approach was by far the most economical available. Without a federal trading program, or alternative mechanism to use emission offsets from sources in other states, it will not be possible for the facility to meet the SO2 and NOx emission caps proposed without extensive capital investment that may render the station uneconomic.

Dominion appreciates IDEM's efforts to preserve compliance flexibility in the likely absence of a regional trading program by allowing interstate emission reduction tradeoffs. However, we are concerned about whether such an approach would be acceptable or approvable by U.S. EPA given the federal Court's ruling striking down the CAIR NOx interstate trading provisions and CAIR's reliance on the surrender of SO2 allowances from the Title IV program. We are also concerned that the proposal inherently assumes that reduction offsets (both within the state and outside of the state) would be readily available – that sources located in other CAIR states would continue, uninterrupted, with plans to install controls to meet CAIR in spite of the current uncertainty as to whether the Court will actually vacate CAIR or allow the rule to remain effective while EPA addresses a remand rulemaking, and the uncertainty as to how other CAIR states would proceed if CAIR is vacated. Absent assurances that the flexibility options IDEM has conceptually laid out would be legally defensible, Dominion has serious reservations about IDEM's ability to include these important options in its proposed rulemaking and our ability to comply with the proposed emission reductions in both a timely and cost-effective manner.

In conclusion, we respectfully urge IDEM to adopt Alternative #2 in the First Notice proposal and abandon the development of a state-specific CAIR replacement rule at least until such time that the uncertainties that have resulted from the ongoing Court proceedings at the federal level are resolved. In the event CAIR becomes officially vacated, we encourage IDEM to work collaboratively with EPA, other CAIR states and stakeholders to develop a consistent, regional approach to identify and cost-effectively implement the reductions needed to address air quality goals in the absence of CAIR.

Thank you again for the opportunity to provide comment. If you have any questions, please contact me or Lenny Dupuis at (804) 273-3022.

Very truly yours,



Pamela F. Faggert

Cc: Mr. Tom Easterly (Commissioner - IDEM)
Mr. Robert Blue (Dominion)
Mr. Lenny Dupuis (Dominion)

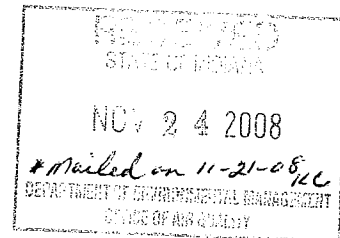
#6



American Electric Power
1 Riverside Plaza
Columbus, OH 43215
AEP.com

November 21, 2008

#08-817(APCB) CAIR Replacement Rule
Susan Bem – Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Ave
Indianapolis, IN 46204



Dear Ms. Bem:

Re: #08-817(APCB) CAIR Replacement Rule

Indiana Michigan Power Company (I&M) and AEP Generating Company, collectively AEP, is pleased to offer these comments on the First Notice of Rulemaking on the CAIR Replacement Rule. AEP supports and joins in the comments of the Indiana Utility Group which are being submitted under separate cover through the Indiana Energy Association.

In this First Notice, IDEM asks for comments on several identified issues and options. AEP believes that IDEM is premature in proceeding with this rulemaking and that IDEM should select the second proposed alternative of not proceeding with rulemaking at this time. While a rulemaking or series of rulemakings may ultimately be needed to address the various issues that CAIR was designed to address for Electric Generating Units (EGUs), a headlong rush to reinstate CAIR as IDEM appears to be proposing is fraught with a lack of technical support for the goals IDEM claims to be pursuing and appears to have the potential to create a rule that cannot be met by the regulated community.

AEP is concerned in reading the second page of the First Notice that some of the concepts outlined in the description would effectively place untenable restrictions on companies that have entered into applicable consent decrees. The First Notice states in relationship to the concept of interstate trading which has been touted by IDEM as a means of compliance with any CAIR rule ultimately promulgated from this rulemaking, "reductions attained elsewhere are: *** Not used as credits to satisfy a separate legal or regulatory obligation." In the case of a multi-state federal consent decree, like the one under which AEP is now operating, such language could be interpreted to disallow a strategic and economic business approach of moving, or transfer of allowances within its own organization to demonstrate compliance with the Indiana rules. This may ultimately require a stand alone state specific compliance plan for the Indiana facilities that may not conform to the requirements of an existing consent decree, thus potentially becoming exorbitantly expensive. In various meetings, Commissioner Easterly has stated that this was not his objective in any rulemaking. Yet public objections have failed to result in

Ms. Susan Bem
November 21, 2008
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suitable changes to the proposed rule language. Any direct CAIR replacement proposed rule must address this issue in a fair and balanced manner as the original federal CAIR concluded.

AEP commits to working with IDEM both individually and in conjunction with the Indiana Utility Group and other stakeholders and wishes to further underscore at this time the need for adequate technical analyses supporting any proposed state rulemaking.

AEP looks forward to working with IDEM to develop a sound rule which benefits air quality in Indiana and further meets a justified federal mandate.

If you have any questions on these comments please contact D. J. Long of my staff at 614-716-1245.

Sincerely,

A handwritten signature in cursive script that reads "David J. Long". Below the signature, the word "For" is written in a smaller, simpler script.

Patrick A. Dal Porto, PE
Manager – Air Quality Services

cc: D. J. Long



Citizens Gas | Citizens Thermal | Citizens Resources
2020 N. Meridian St. | Indianapolis, IN | 46202-1393
www.citizensenergygroup.com

November 21, 2008

Via Facsimile and First Class Mail

#08-817 (APCB) [CAIR Replacement Rule]

Ms. Susan Bem

c/o Administrative Assistant

Rules Development Section

IDEM – Office of Air Quality, MC 61-50

100 North Senate Avenue

Indianapolis, Indiana 46204-2251

RE: **First Notice of Comment Period**
#08-817, CAIR Replacement Rule

Dear Ms. Bem:

Citizens Energy Group ("Citizens") appreciates the opportunity to submit comments on the above-referenced First Notice of Comment Period related to the Agency's CAIR Replacement Rule on behalf of all of the operating divisions of the utility. As the owner and operator of affected units under the NOx budget trading program and the Clean Air Interstate Rule (CAIR) ozone season NOx programs, Citizens is directly affected by this rulemaking.

As a member of the Indiana Energy Association and a participant in the Indiana Utility Group, Citizens supports and endorses the comments submitted. We also offer the following additional comments for IDEM's consideration.

As IDEM is well aware, the initial opinion of the Court to vacate the CAIR rule impacts non-EGU source owners and operators subject only to the ozone season NOx rules, despite the significant (and justified) focus on the impacts to electric utilities. 326 IAC 10-4 will sunset on December 31, 2008, absent any action to reverse the sunset. Unfortunately, without clear direction from either the Courts or the EPA on the fate of CAIR ozone season NOx rules, the non-EGU sources in Indiana are left without a clear understanding of the ozone season NOx allocations for the 2010 ozone season.

Citizens believes that the Agency must undertake rulemaking in short order to implement an ozone season NOx allocation for non-EGU sources under 326 IAC 10-4 for (at a minimum) the 2010 ozone season, but preferably for ozone seasons 2010 – 2012 (a 3-year allocation). This is necessary for owners and operators of affected non-EGU sources to plan for these future years.

As well, there have been many developments with respect to the EPA's CAIR and the initial opinion issued by the U.S. Circuit Court of Appeals for the District of Columbia since the First Notice was initially published in the Indiana Register on October 22, 2008. In light of these

developments, Citizens requests that IDEM be cautious moving forward with rulemaking that impacts only sources located in Indiana so that Indiana is not "out of sync" with the regional cap-and-trade programs upon which CAIR is based, and to prevent negative economic impact on the state.

Should the Agency form additional stakeholder groups during the rulemaking process, Citizens requests to be added to distribution lists and notifications. Please contact me should you have questions regarding these comments. I can be reached at (317) 927-4393 or via e-mail at amciver@citizensenergygroup.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann W. McIver".

Ann W. McIver, QEP
Director, Environmental Stewardship



Alcoa
APGI- Warrick Power Plant
4700 Darlington Road
Newburgh, IN 47630 USA

#08-817(APCB) CAIR Replacement Rule
Susan Bem Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204

2008 November 21

RE: #08-817(APCB) CAIR Replacement Proposed Rule

Dear Ms. Bem:

Alcoa Power Generating Inc. (APGI) wholly owns and operates three industrial boilers (Units 1, 2 and 3) and is co-owner, with Vectren, and the operator of an Electric Generating Unit (Unit 4) at our Warrick Power Plant located outside of Newburgh, IN. Unit 4 is directly affected by the action proposed in this Notice of First Comment Period and Units 1, 2 & 3 are impacted as it relates to how IDEM intends to track and trade SO₂ allowances in conjunction with the Acid Rain Program, as the Federal CAIR rule did. Units 1, 2 & 3 are the largest Opt-In sources within the SO₂ trading program of the Acid Rain Program.

APGI wishes to supply the following comments on the referenced proposed rule:

1. APGI supports IDEM's efforts to expeditiously achieve attainment with the PM₁₀ and Ozone NAAQS standards.
2. APGI supports IDEM's proposal to achieve CAIR-like reductions within Indiana as a keystone of its attainment strategy, with the following suggested changes to add to the program's flexibility and cost effectiveness:
 - a. The Indiana CAIR (ICAIR) Rule should follow either:
 - i. The Acid Rain Program definition of Utility Unit (40CFR72.2 Utility Unit(4)), which allows a co-generation unit to sell up to one-third of its electrical output in a calendar year without becoming an affected unit, or
 - ii. The definitions of Electric Generating Unit (EGU) and Large Affected Unit contained in 326IAC 10-4, which ties applicability to selling electricity under "firm contract to the electrical grid". Such flexibility allows co-generators the ability to 1) help regulated utilities supply electricity to customers in the event grid supply was disrupted and 2) sustains Indiana manufacturing employment by allowing co-generators to generate additional revenue streams that help to secure jobs for Indiana workers. All of the USEPA's communications indicated that Industrial Boilers were not intended to be pulled into CAIR and the USEPA did not list



Alcoa
APGI– Warrick Power Plant
4700 Darlington Road
Newburgh, IN 47630 USA

APGI's industrial boilers as named sources with assigned allowances. Failure to adopt the changes suggested will place severe and unnecessary restrictions on the future operating and revenue generating ability of APGI's assets.

- b. The cost effectiveness of the ICAIR Rule can be maximized if an effective Opt-In program is included. An effective Opt-In program would:
- i. Allow an industrial boiler to opt into just the SO₂ trading program, or just the NO_x trading program or into both programs, as their control cost structure dictates, and
 - ii. Recognize an industrial boiler's baseline emissions from a base year (we understand IDEM's looking at 2005) and utilize the Acid Rain Opt-In Program as a guide to establishing a source's allowances. Two of the criteria that the Acid Rain Program assessed in setting a source's allowances were the lower of:
 1. The source's actual emissions in the base year, or
 2. The source's SIP limits in the base year.

Importantly, in the Acid Rain Opt-In program, EPA recognized that a source's allowances needed to be set once and not adjusted. In 64 Fed Reg. 17100, 17103, April 4, 1995, EPA states that "... (EPA) is choosing to allocate allowances, in perpetuity, at the time the combustion source becomes an affected unit...". In the Preamble to the final rule, EPA went on to further explain this rationale:

EPA believes that assurance of a consistent stream of Opt-In allowances is essential to a viable Opt-In program. Without a consistent stream of allowances, opt-in sources are unable to plan for future year compliance, and purchasers of opt-in allowances will be hesitant to enter into forward or futures contracts because of the risk that allowances may not be available.

3. As IDEM is well aware, 326 IAC 10-4 will sunset on December 31, 2008, absent any action to reverse the sunset. Unfortunately, without clear direction from either the Courts or the EPA on the fate of CAIR ozone season NO_x rules, the non-EGU sources in Indiana are left without a clear understanding of the ozone season NO_x allocations for the 2010 ozone season. APGI believes that IDEM must undertake rulemaking in short order to implement an ozone season NO_x allocation for non-EGU sources under 326 IAC 10-4 for (at a minimum) the 2010 ozone season, but preferably for ozone seasons 2010 – 2012 (a 3-year allocation). This is necessary for owners and operators of affected non-EGU sources to plan for these future years.



Alcoa
APGI- Warrick Power Plant
4700 Darlington Road
Newburgh, IN 47630 USA

Alcoa looks forward to working with IDEM on this rulemaking. Should IDEM continue to hold stakeholder groups meetings during the rulemaking process, APGI requests to be added to distribution lists and notifications. Please contact me should you have questions regarding these comments. I can be reached at (812) 853-1141 or via e-mail at scott.darling@alcoa.com.

Sincerely,
Alcoa Power Generating Inc.

A handwritten signature in dark ink, appearing to read "Scott M. Darling", written over a horizontal line.

Scott M. Darling
Environmental, Health and Safety Manager



A NISource Company

Environmental, Health & Safety
801 E. 86th Avenue
Merrillville, IN 46410

November 21, 2008

Via Electronic mail and US Mail

#08-817 (APCB) CAIR Replacement Rule
Ms. Susan Bem Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

RE: Comments on Development of New Rules Concerning Nitrogen Oxide and Sulfur Dioxide
Emissions from Fossil Fuel-Fired Power Plants

Dear Ms. Bem:

NIPSCO thanks you for the opportunity to comment on the above referenced First Notice of the proposed rules addressing the IDEM plans to obtain emission reductions from fossil fuel-fired power plants to replace those potentially "lost" due to the July 11, 2008, decision on the federal CAIR by the District of Columbia Circuit Court of Appeals. We hope these comments provide constructive ideas concerning the proposed regulation and continue to build upon the discussions between the IDEM and the affected utilities.

We appreciate IDEM's concern over the potential vacatur of the federal CAIR since the rule serves as the basis for state-specific rules to implement the federal CAIR in Indiana and other affected states. Its emission reductions were relied upon not only for meeting CAIR requirements but also for assisting Indiana and other states with meeting several air quality goals established by other CAA programs and are described in detail in IDEM's First Notice.

If the choices for Indiana rule making on this matter are limited to the two options identified in the First Notice, option 1 being moving ahead with state rule making, or option 2, not developing a replacement rule at this time, we recommend option 2. Additional thoughts and concerns regarding this matter are described below.

The IDEM's First Notice of this proposed rule making was developed during a period when the prospect of the Court's issuance of the mandate to effectuate the July 11, 2008, vacatur decision was more certain than it appears at this time. The Court has not issued the mandate and on October 21, 2008, issued an Order seeking additional feedback on its July 11, 2008, decision. In addition to the Order seeking responses from the petitioners, subsequently, several petitions for

rehearing have been filed with the Court. The resolution of these matters could eventually result in a stay of the issuance of the mandate to vacate the entire CAIR, or could factor into the remand of all or various parts of the federal rule back to EPA for re-proposal consistent with the provisions of the Court's decision. Consequently, the federal CAIR, upon which the Indiana rules that implement the CAIR at the state level, remains in place although uncertainty exists regarding its future and content. Therefore, we question the need for IDEM to begin development of an alternative to CAIR at this time and believe this effort is premature and could result in a rule that is inconsistent with a federal solution.

As those who participated in the development of the Indiana CAIR are aware, the CAIR is an innovative but complex rule. The development of the current Indiana CAIR required a significant expenditure of resources from both IDEM and the regulated community, while relying upon the technical support provided by EPA. The IDEM's CAIR is a result of this significant effort by IDEM to incorporate the requirements of the federal CAIR and incorporate conditions tailored to meet specific concerns of importance to Indiana and its citizens. Both the federal and Indiana CAIR contain provisions that set state-wide emission budgets, resulting in facility-specific emission caps that could be met by either the installation of cost-effective emission controls or the utilization of emission allowances available through an EPA administered, multi-state, cap-and-trade program. Indiana utilities had planned on using both the installation of emission controls and the use of emission allowances to comply with the state CAIR emission budget. In order to provide a well designed rule "equivalent" to CAIR, significant resources would be required from IDEM to develop a workable replacement rule, which would then require the development of at least one other rule to address subsequent final EPA actions in this matter. Given the uncertainty in the need for replacement of all or part of the CAIR within Indiana, IDEM should consider whether this significant level of effort will result in a commensurate level of benefits.

If or when the federal CAIR is no longer effective, all states covered by the CAIR will need to re-do their "CAIR" rules to conform to the requirements of the Court and any subsequent EPA replacement rule. While we understand IDEM's desire to be able to readily fill program gaps that would result from issuance of the vacatur mandate, we question whether it would be prudent for Indiana to move forward on its own with rule making at this time, especially when those gaps are currently under Court consideration. It would be difficult for Indiana, or for any individual state, to produce a rule within that state that could be capable of providing the environmental results and cost effectiveness of a multi-state trading program. The solution for resolving the current problem would still be best addressed with a coordinated effort led by EPA at the federal level. With EPA leadership in addressing the issues from the Court's decision to guide individual states, Indiana would be better served by working with other states on a replacement rule at the federal level. A federal rule would provide consistency for all states and avoid disadvantaging any state, its economic base and its affected EGUs.

Relying upon a federal solution and subsequently crafting an Indiana rule to implement that solution would provide several benefits to Indiana. A state rule modeled after a federal solution would reduce concern over EPA approvability and whether the rule will achieve its stated purpose. From a timing perspective, it would avoid the possibility that an Indiana rule would

precede a court decision, not conform to its provisions, and be open to additional challenge. Similarly, it would avoid being inconsistent with any federal rule developed in conformance with a final court decision.

If IDEM were to move forward with an alternate CAIR rule, it would need to address a key flexibility component of CAIR, namely emissions trading. The existing CAIR rules include interstate trading as a means to provide "highly cost-effective" compliance options, whereby the regulated community is able to select the type and location for installation of emission controls. Emission trading programs generally lead utilities to the installation of controls on their highest emitting units (producing highly cost effective emission reductions). Typically, EGUs will over control these units to generate allowances that can be used for achieving compliance on other units within its system, in Indiana, or throughout the numerous other states included in the CAIR program. IDEM needs to consider that if Indiana were to attempt to create an intrastate trading program within a state rule with the existing CAIR caps, it would severely limit the universe of available allowances to trade (not enough reductions can be made to meet, much less go beyond those required to meet emission caps) thereby increasing the cost of compliance beyond what could be considered "highly cost effective" or possibly what would even be achievable. It is our understanding that the amount of emissions reductions, and therefore the size of the cap, determined for a state must consider not only achievability, but also the amount of "highly cost effective" reductions that would be available. IDEM mentions potential flexibility provisions in the First Notice; however, NIPSCO questions whether the provisions provide enough flexibility to meet IDEM's proposed emissions caps. Further study would likely be required to understand if the flexibility provisions result in an achievable reduction program.

While expanding a state-wide trading program to allow trading of emission reduction credits (allowances) from other states would have large benefits, it would also create a separate source of problems. Under such a scenario, Indiana would need to give consideration to whether it would be willing or able to expend considerable resources that would likely be needed to design, implement, and administer a trading program on a state-by-state basis. We would expect Indiana would need to expend considerable resources to attempt to coordinate, as best it can with surrounding states, requirements that would need to duplicate the current EPA administered trading program and involve itself with complex trading issues such as liquidity, uncertainty in markets, and verification of reductions, all issues which the federal program now addresses.

If Indiana allows interstate trading or transactions without administering a program similar to that mentioned above, as suggested in the flexibility provisions of the First Notice, the state will place the burden and risks of transactions and trading program requirements and administration, such as allowance verification, etc., on the regulated community. This approach is untested, difficult at best and maybe unworkable in practice.

According to the IDEM's First Notice, the CAIR emission reductions were relied upon not only for meeting CAIR requirements but also for assisting Indiana with meeting several air quality goals established by other CAA programs, including assisting with achievement of the ozone and PM NAAQS. We appreciate the IDEM's concern about achieving attainment of these NAAQS and the contribution of CAIR emissions reductions to that goal. However, CAIR wasn't

intended to address all nonattainment area concerns. It is inappropriate to presume controls on Indiana EGUs alone will bring Indiana's nonattainment areas into attainment. We believe attainment will require reductions from multiple states and multiple source categories, not just Indiana CAIR EGUs. Therefore, we recommend IDEM not focus its efforts on crafting an alternate Indiana CAIR for NAAQS attainment purposes, but work toward seeking a federal solution to the CAIR situation. This would help address interstate contributions to Indiana nonattainment areas.

If a federal rule to provide the consistency across the CAIR states is not developed as a replacement to a vacated CAIR, and Indiana feels compelled to move forward with a rule making, we offer the following two alternatives for IDEM consideration. The first alternative (alternative 1) would involve an interstate trading program and the CAIR emission budget. The second alternative (alternative 2) would be limited to intrastate trading within Indiana and utilize the latest IPM projections of Indiana CAIR emissions to establish the emission budget.

Before providing the details of the alternative programs, the following factors should be considered in the program design. Given the possibility that either the CAIR or some component(s) of CAIR could be vacated, IDEM has stated that "Indiana needs to be prepared to achieve emission reductions that would have been achieved under CAIR with the CAIR replacement rule." IDEM mentions in the First Notice, and it is important to keep in mind, that once the existing CAIR (or component(s) of the existing CAIR) is vacated, in order to meet the needs of the Court remand, the U. S. EPA will start drafting a new federal rule. Accordingly, Indiana's replacement rule will likely only be needed as a temporary measure to replace CAIR, until the new federal rules are complete. Indiana would also need to address transition issues for any Indiana rule developed ahead of a federal solution.

IDEM has mentioned that the following factors should be considered in proposing a "replacement" rule:

- Reestablish NOx and SO2 annual emission allowance budgets
- Base the budgets on Phase I and Phase II of CAIR
- Establish a Phase II NOx budget for the ozone season
- Preserve components of the current Indiana CAIR
- Add flexibility provisions to allow sources to comply

NIPSCO generally agrees that these factors should be considered in the design of a CAIR replacement program. The components mentioned above can help develop a rule that would achieve emission reductions equivalent to those in the existing CAIR. However, at this time, given the uncertainty in the decisions of the court and EPA's response on remand, we question the practicality and timing of attempting to address Phase II requirements in a replacement rule.

The following needs to be considered. Since the CAIR is a trading program containing flexible mechanisms for complying with the emission reduction requirements, IDEM in determining an "equivalent" control program, needs to first consider what reductions would have been achieved with CAIR given the compliance options available under a multi-state trading program. These

expected reductions would provide the basis for establishing alternate emission reduction targets or caps on emissions in the proposed replacement program. The IDEM must carefully consider these elements when establishing a new reduction requirement in the absence of the flexibility provided by a full multi-state trading program.

Indiana utilities designed and implemented CAIR compliance strategies that included the timing and location for installation of emissions controls. The compliance programs developed by Indiana utilities fully relied upon the flexibility of the multi-state trading program to acquire allowances to cost-effectively meet the emission reduction requirements not met by the installation of controls. With the initial CAIR compliance deadlines looming, January 2009 for NOx and January 2010 for SO2, IDEM cannot reasonably expect that EGUs could install any additional controls in the near term (beyond those already planned for CAIR Phase I) to meet or achieve emission levels not expected or anticipated under the existing CAIR Phase I program. These factors must be taken into account when "considering a control program for EGUs that can be deemed equivalent to the current state rules".

Alternative 1 – CAIR Emissions Budget with Robust Interstate Trading

NIPSCO suggests two alternative design structures for IDEM to consider for the CAIR replacement rule should IDEM move forward with CAIR replacement rule making. The first alternative (alternative 1) would involve the establishment of an interstate trading program combined with the original CAIR emission budgets (NOx and SO2). This alternative would establish the state-wide emission allowance cap at a level equivalent to the existing CAIR program. As mentioned earlier, a robust multi-state trading program similar to CAIR must be developed and administered by a central authority. Without the development of a fairly robust multi-state trading program to provide the flexibility needed to meet the Indiana CAIR caps, which are "effectively" more stringent than the expected actual emissions with the existing and projected CAIR controls in place and operating (see alternative 2 below), this alternative could involve a significant compliance risk and result in a cap that is unachievable at any cost. The emission allowances that make up the cap would be allocated in accordance with the procedures already in place for the current CAIR rule. The CAIR emission allowance methodology and design was subject to a thorough evaluation and review during the rule making process. In consideration of the Court decision, this method could also be used in the allocation of the SO2 allowances. If the CAIR allocation method is used for SO2 allowances, then in acknowledgement of early compliance efforts by utilities, IDEM should allow the use of Title IV – Acid Rain program banked SO2 allowances to achieve compliance in this program.

Alternative 2 – IPM CAIR Projected 2010 Emissions Based Budget and Intrastate Trading

The second alternative (alternative 2) would utilize the EPA's CAIR IPM projections of Indiana EGU emissions in 2010 under CAIR to establish the emission budget(s) and then implement intrastate emission allowance trading for EGUs within Indiana. IPM is a model that is designed to project the most cost effective application of emission controls and the resultant emissions across all states in the entire trading program. The final technical support documents in the EPA CAIR rule development reference IPM model projections of multi-state EGU pollution control

equipment installation and resultant emissions for EGUs participating in the CAIR multi-state trading program. In the final CAIR IPM runs for 2010, the results projected that Indiana EGUs operating within the CAIR trading program, while complying with the CAIR emission reduction requirements, would emit 453,501 tons of SO₂ and 123,780 ton of NO_x on an annual basis. Since this is the level of emissions projected for Indiana operating under CAIR, these annual emissions projections would be used to establish the appropriate emission caps that show equivalency with the original CAIR program. As mentioned for the first alternative, the emission allowances that make up the cap would also be allocated in accordance with the procedures already in place for the current CAIR rule and extended to a new SO₂ allocation methodology similar to annual NO_x. If this method is used for SO₂ allowances, then in acknowledgement of early compliance efforts by utilities, IDEM should allow the use of Title IV – Acid Rain program banked SO₂ allowances to achieve compliance in this program.

We would be happy to discuss our specific concerns in more detail with you and your staff. NIPSCO looks forward to working with IDEM on the process of addressing the CAIR as a result of the decision by the Court. We remain committed to working closely with IDEM to establish more effective ways to reach our common goal of ensuring proper protection of air quality in the state of Indiana. If you have any questions, please do not hesitate to contact me at 219-647-5240.

Very truly yours,

John M. Ross
Manager, Regulatory Programs
EH&S
NiSource Corp. Services
